



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: AUGUST 29, 2022

IN THE MATTER OF:

Appeal Board No. 622800

PRESENT: JUNE F. O'NEILL, MEMBER

In Appeal Board Nos. 622797 and 622798, the claimant appeals from the decisions of the Administrative Law Judge filed April 6, 2022, insofar as they sustained the initial determinations holding the claimant ineligible to receive benefits, effective November 23, 2020 through December 27, 2020, on the basis that the claimant was on a paid vacation or holiday period; and charging the claimant with an overpayment of \$176.50 in regular unemployment insurance benefits recoverable pursuant to Labor Law § 597 (4).

In Appeal Board Nos. 622799, 622800 and 622801, the claimant appeals from the decisions of the Administrative Law Judge filed April 6, 2022, which sustained the initial determination holding the claimant ineligible to receive benefits, effective March 30, 2020 through March 21, 2021, on the basis that the claimant was not totally unemployed and/or had earnings that exceeded the statutory limitation, as modified so that for the week ending April 5, 2020, the claimant lacked total unemployment on only three days and did not earn over \$504; sustained the initial determination charging the claimant with an overpayment of \$5,295 in regular unemployment insurance benefits recoverable pursuant to Labor Law § 597 (4), \$9,000 in Federal Pandemic Unemployment

Compensation (FPUC) benefits recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, \$5,559.75 in Pandemic Emergency Unemployment Compensation (PEUC) benefits recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and

Economic Security (CARES) Act of 2020, and \$300 in Lost Wages Assistance (LWA) benefits recoverable pursuant to 44 CFR Sec. 206.120 (f)(5) as modified with

regard to the regular unemployment insurance benefits overpayment in accordance with the decision and referred the amount of the regular unemployment insurance benefits overpayment to the Department of Labor for recalculation in accordance with the decision; and sustained the initial determination reducing the claimant's right to receive future benefits by 288 effective days and charging a civil penalty of \$2,978.21 on the basis that the claimant made willful misrepresentations to obtain benefits as modified to impose a civil penalty in accordance with the decision and referred the amount of the civil penalty to the Department of Labor for recalculation in accordance with the decision.

At the combined telephone conference hearings before the Administrative Law Judge, testimony was taken. There were appearances by the claimant and on behalf of the employer.

Our review of the record reveals that the case should be remanded to hold a hearing. The record was not sufficiently developed on the issue of willful misrepresentations to obtain benefits. The parties should have another opportunity to submit additional testimony and other evidence on this issue. In this regard, the hearing transcripts are to be sent to the parties. The Commissioner of Labor is to appear at the hearing by a representative.

The claimant shall be confronted with page 20 [page 99 of the hearing packet] of the 2020 Claimant Handbook which has been marked as Hearing Exhibit 2. Specifically, the claimant is to be confronted with the entire paragraph entitled, "What if I work part time?", including references to the maximum benefit rate earnings in gross wages. The claimant is also to be confronted with the statement regarding earnings in gross wages in the certification instructions included in Hearing Exhibit 5.

The employer's representative is to be asked whether the representative has any objection to the continuation as exhibits of each of the seven documents previously entered as exhibits at the March 16, 2022 hearing. The employer's representative is to be offered the opportunity to cross-examine the claimant on her testimony from the March 16, 2022 hearing.

In addition, the parties shall be confronted with the March 16, 2022 information submitted by the employer to the Department of Labor, including the cover letter and the paystub for the check dated June 30, 2020 for the pay period of June 11, 2020 through June 24, 2020 and the paystub for the check

dated January 28, 2021 for the pay period of January 2, 2021 through January 15, 2021 regarding the hours worked and gross wages earned by the claimant. The claimant is to be asked whether she was paid for "working" on June 11, 2020 and June 12, 2020, and whether she worked January 4, 2021 through January 8, 2021. The cover letter and paystubs shall be entered into the record in the usual manner.

A witness for the Commissioner of Labor shall be questioned as to whether the \$176.50 overpayment associated with the issue of holiday pay is composed of regular unemployment insurance benefits or PEUC benefits as is stated on the Inquiry Screen (LO404). The Inquiry Screens for this overpayment and for those associated with the issue of lack of total unemployment [page 8 of the 50 page hearing packet and pages 9-13 of the 119 page hearing packet] are to be entered into the record in the usual manner.

The Department of Labor's October 6, 2021 letter to the claimant [pages 41-42 of the hearing packet], which had been considered, shall be entered into the record in the usual manner.

In the discretion of the Administrative Law Judge further relevant testimony and evidence may be received.

Now, based on all of the foregoing, it is

ORDERED, that the decisions of the Administrative Law Judge, which sustained or sustained as modified the initial determinations of vacation pay, recoverable overpayment, lack of total unemployment,

recoverable overpayments and willful misrepresentations, be, and the same hereby are, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues of only vacation pay, recoverable overpayment, lack of total unemployment and/or exceeding the statutory limitation, recoverable overpayments and willful misrepresentations, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard;

and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issues of vacation pay, recoverable overpayment, lack of total unemployment and/or exceeding the statutory limitation, recoverable overpayments and willful misrepresentations, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

JUNE F. O'NEILL, MEMBER